

David Fink (*Pro Hac Vice*)
7519 Apache Plume
Houston, TX 77071
Telephone: 713-729-4991
Facsimile: 713-729-4951
Email: federallitigation@comcast.net

Attorneys for Plaintiff
FuzzySharp Technologies Incorporated

Mark L. Pettinari (Cal. Bar No.119293)
LAW OFFICES OF MARK L. PETTINARI
Stock Exchange Tower
155 Sansome Street, Suite 400
San Francisco, CA 94104
Telephone: 415-240-4200
Facsimile: 415-240-4202
Email: mlpettinari@mlplawoffices.com

Attorneys for Defendant
3D Labs Inc., Ltd.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FUZZYSHARP TECHNOLOGIES)	Case No.: 07-CV-5948-RS
INCORPORATED,)	
)	
Plaintiff,)	STIPULATED PROTECTIVE ORDER
)	
vs.)	
)	
3D LABS INC., LTD.,)	
)	
Defendant.)	
)	
)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

1 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
2 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
3 all disclosures or responses to discovery and that the protection it affords extends only to the
4 limited information or items that are entitled under the applicable legal principles to treatment as
5 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
6 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil
7 Local Rule 79-5 sets forth the procedures that must be followed when a party seeks to file material
8 under seal.

9 2. DEFINITIONS

10 2.1 Party: any party to this action, including all of its officers, directors, employees,
11 consultants, retained experts, and outside counsel (and their support staff).

12 2.2 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner generated, stored, or maintained (including, among other things, testimony,
14 transcripts, or tangible things) that are produced or generated in disclosures or responses to
15 discovery in this matter.

16 2.3 "Confidential" Information or Items: information (regardless of how generated,
17 stored or maintained) or tangible things that qualify for protection under standards developed
18 under Rule 26(c) of the Federal Rules of Civil Procedure.

19 2.4 "Confidential – Attorneys' Eyes Only" Information or Items: extremely sensitive
20 "Confidential Information or Items" whose disclosure to another Party or non- party would create
21 a substantial risk of serious injury to the Producing Party that could not be avoided by less
22 restrictive means.

23 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
26 Material in this action.

1 2.7. Designating Party: a Party or non-party that designates information or items that it
2 produces in disclosures or in responses to discovery as “Confidential” or “Confidential –
3 Attorneys’ Eyes Only.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
5 “Confidential” or as “Confidential – Attorneys’ Eyes Only.”

6 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained
7 to represent or advise a Party in this action.

8 2.10 House Counsel: attorneys who are employees of a Party or of a parent of a Party
9 and includes attorneys who are employees of subsidiaries of the parent.

10 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
11 support staffs).

12 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this action and who is not a past or a current employee of a Party or of a competitor
15 of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or
16 a competitor of a Party. This definition includes a professional jury or trial consultant retained in
17 connection with this litigation.

18 2.13 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., document reproduction; videotaping; translating; preparing exhibits or demonstrations;
20 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
21 subcontractors.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
25 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
26 parties or counsel to or in court or in other settings that might reveal Protected Material.

27

1
2 4. DURATION

3 Even after the termination of this litigation, the confidentiality obligations imposed by this
4 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
5 otherwise directs.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
8 or non-party that designates information or items for protection under this Order must take care to
9 limit any such designation to specific material that qualifies under the appropriate standards. A
10 Designating Party must take care to designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify — so that other portions of the
12 material, documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routine designations are prohibited. Designations that are shown
15 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
16 encumber or retard the case development process, or to impose unnecessary expenses and burdens
17 on other parties), expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items that it
19 designated for protection do not qualify for protection at all, or do not qualify for the level of
20 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
23 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
24 material that qualifies for protection under this Order must be clearly designated as such before the
25 material is disclosed or produced.

26 Designation in conformity with this Order requires:
27

1 (a) for information in documentary form (apart from transcripts of depositions or other
2 pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected
4 material.

5 A Party or non-party that makes original documents or materials available for inspection
6 need not designate them for protection until after the inspecting Party has indicated which material
7 it would like copied and produced. During the inspection and before the designation, all of the
8 material made available for inspection shall be deemed “CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY.” After the inspecting Party has identified the documents it wants copied and
10 produced, the Producing Party must determine which documents, or portions thereof, qualify for
11 protection under this Order, then, before producing the specified documents, the Producing Party
12 must affix the appropriate legend (“CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY”) to each page that contains Protected Material.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party
15 or non-party offering or sponsoring the testimony identify on the record, before the close of the
16 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
17 of the testimony that qualify as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is
18 impractical to identify separately each portion of testimony that is entitled to protection, and when
19 it appears that substantial portions of the testimony may qualify for protection, the Party or non-
20 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition
21 or proceeding is concluded) a right to have up to 20 days after receipt of a transcript to identify the
22 specific portions of the testimony as to which protection is sought and to specify the level of
23 protection being asserted (“CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY”). Only those portions of the testimony that are appropriately designated for protection
25 within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

26 Transcript pages containing Protected Material must be separately bound by the court
27 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or

1 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty
2 offering or sponsoring the witness or presenting the testimony.

3 (c) for information produced in some form other than documentary, and for any other
4 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
5 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
6 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item
7 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
8 portions, specifying whether they qualify as “Confidential” or as “Confidential – Attorneys’ Eyes
9 Only.”

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items as “Confidential” or “Confidential – Attorneys’ Eyes
12 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
13 Order for such material. If material is appropriately designated as “Confidential” or “Confidential
14 – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely
15 notification of the designation, must make reasonable efforts to assure that the material is treated
16 in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
19 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
20 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
21 waive its right to challenge a confidentiality designation by electing not to mount a challenge
22 promptly after the original designation is disclosed.

23 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
24 confidentiality designation must do so in good faith and must begin the process by conferring
25 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
26 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
27 that the confidentiality designation was not proper and must give the Designating Party an

1 opportunity to review the designated material, to reconsider the circumstances, and, if no change
2 in designation is offered, to explain the basis for the chosen designation. A challenging Party may
3 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
4 process first.

5 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
6 designation after considering the justification offered by the Designating Party may file and serve
7 a motion that identifies the challenged material and sets forth in detail the basis for the challenge.
8 Each such motion must be accompanied by a competent declaration that affirms that the movant
9 has complied with the meet and confer requirements imposed in the preceding paragraph and that
10 sets forth with specificity the justification for the confidentiality designation that was given by the
11 Designating Party in the meet and confer dialogue.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
13 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
14 question the level of protection to which it is entitled under the Producing Party's designation.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a non-party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
19 the categories of persons and under the conditions described in this Order. When the litigation has
20 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
21 DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a location and in
23 a secure manner that ensures that access is limited to the persons authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
25 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
26 information or item designated CONFIDENTIAL only to:

1 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
2 said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
3 who have signed an "Agreement to Be Bound by Protective Order" in the form that is attached
4 hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving
6 Party to whom disclosure is reasonably necessary for this litigation and who have signed an
7 "Agreement to Be Bound by Protective Order" in the form that is attached hereto as Exhibit A;

8 (c) experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is
9 reasonably necessary for this litigation; (2) who have signed an "Agreement to Be Bound by
10 Protective Order" in the form that is attached hereto as Exhibit A; and (3) as to whom the
11 procedures set forth in paragraph 7.4 below, have been followed;

12 (d) the Court and its personnel;

13 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
14 necessary for this litigation and who have signed an "Agreement to Be Bound by Protective
15 Order" in the form that is attached hereto as Exhibit A;

16 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
17 necessary and who have signed an "Agreement to Be Bound by Protective Order" in the form that
18 is attached hereto as Exhibit A. Pages of transcribed deposition testimony or exhibits to
19 depositions that reveal Protected Material must be separately bound by the court reporter and may
20 not be disclosed to anyone except as permitted under this Stipulated Protective Order.

21 (g) the author of the document or the original source of the information.

22 7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
23 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated "CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" only to:

26 (a) the Receiving Party's Outside Counsel of record in this action and House Counsel, as
27 well as employees of said Counsel to whom it is reasonably necessary to disclose the information

1 for this litigation and who have signed the “Agreement to Be Bound by Protective Order” in the
2 form that is attached hereto as Exhibit A;

3 (b) experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is
4 reasonably necessary for this litigation, (2) who have signed an “Agreement to Be Bound by
5 Protective Order” in the form that is attached hereto as Exhibit A, and (3) as to whom the
6 procedures set forth in paragraph 7.4, below, have been followed;

7 (c) the Court and its personnel;

8 (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably
9 necessary for this litigation and who have signed an “Agreement to Be Bound by Protective
10 Order” in the form that is attached hereto as Exhibit A; and

11 (e) the author of the document or the original source of the information.

12 7.4 Procedures for Approving Disclosure of “CONFIDENTIAL” or
13 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts

14 (a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a
15 Party that seeks to disclose to an “Expert” (as defined in this Order) any information or item that
16 has been designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must make a
17 written request to the Designating Party that (1) sets forth the full name of the Expert and the city
18 and state of his or her primary residence, (2) attaches a copy of the Expert’s current curriculum
19 vitae/resume, (3) identifies the Expert’s current employer(s), (4) identifies each person or entity
20 from whom the Expert has received compensation for work in his or her areas of expertise or to
21 whom the expert has provided professional services at any time during the preceding five years,
22 and (5) identifies (by name and number of the case, filing date, and location of court) any
23 litigation in connection with which the Expert has provided any professional services during the
24 preceding five years.

25 (b) A Party that makes a request and provides the information specified in the preceding
26 paragraph may disclose the subject Protected Material to the identified Expert unless, within ten
27

1 court days of delivering the request, the Party receives a written objection from the Designating
2 Party. Any such objection must set forth in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer with the
4 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
5 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may
6 file a motion seeking permission from the court to do so. Any such motion must describe the
7 circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert
8 is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any
9 additional means that might be used to reduce that risk. In addition, any such motion must be
10 accompanied by a competent declaration in which the movant describes the parties' efforts to
11 resolve the matter by agreement (i.e., the extent and the content of the meet and confer
12 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve
13 the disclosure.

14 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of
15 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
16 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

19 If a Receiving Party is served with a subpoena or an order issued in other litigation that
20 would compel disclosure of any information or items designated in this action as
21 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party
22 must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event
23 more than ten court days after receiving the subpoena or order. Such notification must include a
24 copy of the subpoena or court order.

25 The Receiving Party also must immediately inform in writing the Party who caused the
26 subpoena or order to issue in the other litigation that some or all the material covered by the
27 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

1 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of
4 this Protective Order and to afford the Designating Party in this case an opportunity to try to
5 protect its confidentiality interests in the court from which the subpoena or order issued. The
6 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
7 confidential material — and nothing in these provisions should be construed as authorizing or
8 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
11 Material to any person or in any circumstance not authorized under this Stipulated Protective
12 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
13 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
14 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
15 Order, and (d) request such person or persons to execute an “Acknowledgment and Agreement to
16 Be Bound” in the form that is attached hereto as Exhibit A.

17 10. FILING PROTECTED MATERIAL

18 Without written permission from the Designating Party or a court order secured after
19 appropriate notice to all interested persons, a Party may not file in the public record in this action
20 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
21 with Civil Local Rule 79-5.

22 11. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
24 after the final termination of this action, each Receiving Party must return all Protected Material to
25 the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
26 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
27 Protected Material. With permission in writing from the Designating Party, the Receiving Party

1 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
 2 Material is returned or destroyed, the Receiving Party must submit a written certification to the
 3 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
 4 deadline that identifies (by category, where appropriate) all the Protected Material that was
 5 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
 6 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
 7 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
 8 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
 9 even if such materials contain Protected Material. Any such archival copies that contain or
 10 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
 11 (DURATION), above.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 14 seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 16 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 18 Party waives any right to object on any ground to use in evidence of any of the material covered
 19 by this Protective Order.

20 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

21
 22 Dated: April 16, 2008

By: David Fink
 David Fink
 Attorneys for Plaintiff
 FuzzySharp Technologies Incorporated

23
 24
 25 Dated: April 16, 2008

By: Mark L. Pettinari
 Mark L. Pettinari
 Attorneys for Defendant
 3D Labs Inc., Ltd.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

The Honorable Richard Seeborg
United States District Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____ [print or type full address], declare that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the Northern
District of California on _____ [insert date] in the case of *FuzzySharp Technologies*
Incorporated v. 3D Labs Inc., Ltd.; Civil Action No. 07-CV-5948. I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____
_____ [print or type full address and telephone number] as my California agent
for service of process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on this ____ day of _____ [insert date] at _____
_____ [insert City and State where sworn and signed].

_____ [signature]

[printed name of signature]